

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CRI-2018-092-005114
[2019] NZHC 1746**

THE QUEEN

v

VILLIAMI TEKIMASISU TAANI

Hearing: 23 July 2019

Appearances: G Kayes for the Crown
R Mansfield and S Lack for the Defendant

Sentence: 23 July 2019

SENTENCING NOTES OF HINTON J

Counsel/Solicitors:
Ronald Mansfield, Barrister, Auckland
Steven Lack, Barrister, Auckland
Kayes Fletcher Walker Ltd, Manukau

Introduction

[1] Mr Taani, you pleaded guilty to one charge of murder and one charge of attempted murder, following a sentence indication I gave.

[2] I have chosen to set out my reasoning in full today, rather than annex the sentence indication to these sentencing notes.

[3] You were charged alongside two others. Since you pleaded guilty, they have been found guilty by a jury but have not yet been sentenced.

[4] I must proceed on the summary of facts to which you pleaded guilty. This presents some difficulty because that summary of facts describes your co-defendants' roles and other matters in terms which may not be consistent with the evidence in the trial. Readers of these sentencing notes must therefore bear this in mind, and not presume my account is an accurate summary in all respects of the evidence in the trial. For this reason, I have also chosen not to name your co-defendants.

Background

[5] The surviving complainant is a Mrs Tu'uheava. Her husband is the deceased. They had been married for nine years, lived in South Auckland, and their son was eight at the time of Mr Tu'uheava's death.

[6] The deceased became a patched member of the Nomads Motorcycle Group in Australia. After he returned to New Zealand in 2017, he began building an association with the Comancheros Motorcycle Club New Zealand, of which you are a member. Since the beginning of 2018, the deceased was involved in selling methamphetamine.

[7] On 30 April 2018, you and your two co-defendants met with Mr and Mrs Tu'uheava on Greenwood Road, Mangere. You had met once before on the same day in Manukau and had texted each other to arrange the location.

[8] Mr and Mrs Tu'uheava arrived there around 10.44 pm. Mr Tu'uheava had told his wife he was going there to obtain a quantity of methamphetamine. They had a

luggage bag in the boot with \$48,000 in cash and a sports bag in the front with \$15,000 in cash, and some methamphetamine.

[9] The deceased got out of the car to speak with you. The conversation apparently went on for around 10 minutes, after which he returned to the car and told Mrs Tu'uheava that the "deal" was done.

[10] Everyone left, and Mr and Mrs Tu'uheava drove to a nearby petrol station.

[11] They came back to meet you and the other two defendants again on Greenwood Road at around 11.15 pm.

[12] Mr Tu'uheava got out of the car carrying the sports bag and spoke with you and another defendant behind his car. Mrs Tu'uheava stayed in that car. The conversation continued for a surprisingly long period of one hour and 20 minutes.

[13] Mr Tu'uheava came running back to the car, screaming his wife's name. She saw you pointing a gun at her husband. She looked outside her window and a co-defendant was pointing a gun at her, ordering her out of the vehicle. That person opened her door and pulled her out by her arm.

[14] The Tu'uheavas were made to stand in between the two cars, while you and the co-defendant pointed guns at them. They tried to run away. You and the co-defendant shot at them. You caught them and ordered them off the side of the road into some bush. You said you were going to shoot them in there.

[15] Mrs Tu'uheava crouched on her knees, with her head in her arms. One of you shot her twice, hitting her in the arm. She and Mr Tu'uheava managed to run to a nearby tree to find cover.

[16] Both you and your co-defendant then returned to your vehicle and drove it to where Mr and Mrs Tu'uheava were attempting to hide. One of you walked over and shot Mrs Tu'uheava twice in the head. She fell to the ground, still conscious. She pretended to be dead. She could hear Mr Tu'uheava calling her name. He tried to run away, but you shot him twice with a .22 calibre rifle. You then walked up to him and

shot him two more times. You shot at Mrs Tu'uheava twice more, before leaving with the other two defendants by car.

[17] The three of you went to one of your houses and disposed of the phone used to contact Mr Tu'uheava.

[18] Mr and Mrs Tu'uheava were not found until 6.00 am the next day by a passing motorist. Mrs Tu'uheava miraculously survived. Surgeons extracted one .38 calibre round from her head. A second one had to be left in because it was too dangerous to remove it.

[19] Mr Tu'uheava died at the scene. He had been shot seven times: twice to the arm, three times in the head, and twice in the back.

Mr Taani

[20] Mr Taani, you are 26 years old and of Tongan descent. You were raised in a strict Christian household. You were born in New Zealand, but lived for brief periods in Australia. You have a fiancée and the two of you have children. You have another child to a different woman. Your fiancée describes you as a good and attentive father.

[21] It seems you lived something of a double life. You are, as I have said, a patched member of the Comancheros. Your fiancée and other members of your family apparently had no knowledge of your involvement in any criminal activities. You say you shielded your family from your life in the gang.

[22] You have a limited criminal history, as your counsel said, consisting of wilful damage, injuring with intent to injure – for which you were sentenced to community work – and a conviction for breach of community work.

[23] You are a methamphetamine user. You told the pre-sentence report-writer that you were under the influence of methamphetamine at the time of the offending.

[24] You expressed some remorse to the pre-sentence report-writer. You said, “[The deceased’s] children will have to live without a father and I have to live with that”.

You also commented on the effect of your actions on your family. You did not comment to the report-writer on Mrs Tu'uheava's having to live with her injuries and trauma. You did, however, request a referral to restorative justice. Mrs Tu'uheava understandably declined to participate in that.

[25] You have written to the Court saying you accept full responsibility for your actions and that you would go back and change things if you could. You said you apologise to the victims, their family, the community and your own family.

[26] A number of members of your family and a friend have also written to the Court saying they know you only as the kindest and most caring person and could not believe you had committed these terrible crimes. They describe how you have been a full-time carer for sick family members. They say how drastic the consequences of your actions are for your loving family and children. Some of them report that they believe you are really sorry.

Victim impact statements

[27] I also have before me two victim impact statements: one from Mrs Tu'uheava and one from the deceased's mother.

[28] Mrs Tu'uheava lives with their nine-year-old son. She writes that she still has bullets in her arm and a bullet in her brain. Her vision is deteriorating, and she has to wear glasses permanently. She has constant headaches. She writes that she cannot think, and, in what must be a significant understatement, that her life is not the same. She is in constant pain and attends medical appointments four times a week. She cannot work because of her injuries, and her benefit leaves her only \$20 at the end of the week after expenses. She writes that not a day goes past that she does not think about what happened. She has PTSD. She cannot sleep.

[29] The victims' son is still suffering. He wears his father's clothes and looks at pictures of him at night. It has affected his behaviour at home and at school. Mrs Tu'uheava writes that she is so grateful to be alive, because she does not know how their son could cope without both of his parents.

[30] The deceased's mother writes that she does not have any bitterness towards you, because of her Christian beliefs. She describes how her son was loved by many family members and friends because of his friendly nature and his always being willing to help others. She says he was not a perfect child, but that she could not ask for a better son.

[31] It is clear that your actions have had a lasting effect, especially on Mrs Tu'uheava, but also on the victims' child and their wider family. I bear this in mind as I sentence you today.

[32] I was also struck, reading the letters from the Tu'uheava family, and your family, that there could not be a more tragic illustration than this case of the true effects of gang membership and methamphetamine use.

Murder sentence

[33] There is a presumption of life imprisonment where a person is convicted of murder.¹ Both the Crown and defence accept this presumption is not displaced in this case.

[34] In such serious offending, the relevant purposes of sentencing are to hold you accountable for harm done to the victim, to denounce your conduct, and to protect the community from you.²

[35] Where life imprisonment is imposed, s 103 of the Sentencing Act 2002 mandates a minimum period of imprisonment of not less than 10 years. But s 103 is subject to s 104, which requires a Court to impose a minimum period of 17 years if there are one or more named serious characteristics to the offending, unless it would be manifestly unjust to do so.

[36] The characteristics which bring in s 104, include:³

¹ Sentencing Act 2002, s 102(1).

² Sentencing Act 2002, s 7.

³ Sentencing Act 2002, s 104(1)(d), (e), and (i).

- (a) if the murder was committed in the course of another serious offence; or
- (b) if the murder was committed with a high level of brutality, cruelty, depravity, or callousness; or
- (c) in any other exceptional circumstances.

[37] The Crown and your counsel agree that the murder was committed in the course of another serious offence, being dealing in methamphetamine.⁴ They also agree that there are other exceptional circumstances present, being the attempted murder of Mrs Tu'uheava. Clearly both of these submissions are correct.

[38] The Crown submits the murder was also committed with a high level of brutality, cruelty, depravity, or callousness. Your counsel does not accept this.

[39] The Court of Appeal in *R v Gottermeyer* wrote that these words refer to “savage violence, callous indifference, moral corruption and insensitive and cruel disregard for others, respectively”.⁵ The Court noted these elements must be present to a “high level”, as most murders will involve some of these elements.

[40] The Crown says the present offending was particularly violent and cruel. They point to your shooting an unarmed man several times at close range. Then, after he was already injured, you came back and shot him again. They submit Mr Tu'uheava would have been severely injured and barely conscious when you came back to shoot him again. They say this amounts to an execution-style killing, where Mr Tu'uheava stood no chance of defending himself.

[41] Mr Mansfield submits there is not a “high” level of brutality, cruelty or callousness present here. He says, while there were a number of shots fired, and the deceased sustained serious injuries before dying, all of this occurred in a short period of time and was not intentionally callous or cruel. He says that, rather, what occurred was a reflection of the “dynamic nature” of the environment.

⁴ The Crown cite *R v Doyle* HC Rotorua CRI-2005-070-6451, 13 October 2006 as a comparable case where this factor was found to be present.

⁵ *R v Gottermeyer* [2014] NZCA 205 at [79].

[42] I do not agree with that submission. I consider this offending does clearly display a high level of brutality and callousness. I come to this conclusion because of the number of times the deceased was shot, and because I agree that this was an execution-style killing, where you and your co-defendant led Mr and Mrs Tu'uheava into the bush and, at the same time, you were saying you were going to kill them.

[43] More than one, in fact three, of the factors in s 104 are present. I therefore must impose a minimum period of imprisonment of 17 years or more, unless it would be manifestly unjust. If, regardless of s 104, the minimum period would be greater than 17 years, based on your level of culpability, then I must impose that greater term.⁶

[44] As I said in my sentence indication, this is a case where I consider, regardless of s 104, the appropriate minimum period is greater than 17 years. This involves setting a starting point by reference to the aggravating and mitigating features of your offending and considering similar cases. Then I have to decide whether any features personal to you warrant an adjustment to that starting point and what discount is appropriate for your guilty plea.

[45] The Crown submits the following are the aggravating features of the offending, which include the s 104 factors I have already discussed:

- (a) the murder was committed in the course of another serious offence;
- (b) high levels of brutality;
- (c) other exceptional circumstances;
- (d) connection between your offending and your involvement in an organised criminal association, because you are part of a rival gang from the victim;⁷

⁶ *R v Williams* [2005] 2 NZLR 506 (CA) at [52]-[54].

⁷ Sentencing Act 2002, s 9(1)(hb).

(e) extent of harm resulting from the offending – the harm to Mrs Tu'uheava.⁸

[46] I accept these as the aggravating features of the offending. To these, use of a weapon⁹ could obviously be added.

[47] The Crown submits that the combination of aggravating features in this case means that a minimum period of at least 17 years would be appropriate, when compared to other cases involving similar offending.¹⁰ They submit a starting point of 19 years is appropriate.

[48] Your counsel does not dispute the aggravating factors that I have listed, besides the presence of a high level of brutality, which I have already considered and found does exist. Your counsel submits a starting point of 18 years is appropriate.

[49] Neither side submits any mitigating features are present in relation to the offending itself.

[50] Counsel for both sides have referred me to a number of somewhat comparable cases.¹¹ I have considered them, but will not undertake a detailed discussion of them.

[51] I consider this offending is most similar to that in *R v Doyle*.¹² In that case, the offender met with the two victims so they could give him methamphetamine. He brought a sawn-off shotgun to the meeting. During the meeting, the offender thought he was being set up, and shot one victim, killing him instantly. He then shot the other victim twice, once in the arm and once in the cheek. He had to reload in between shots. He then went to some lengths to hide evidence, but eventually admitted to what he had done and assisted Police with finding the evidence. The Court adopted a

⁸ Section 9(1)(d).

⁹ Section 9(1)(a).

¹⁰ The Crown cites *R v Tumahai* CA262/04, 26 October 2004; *Marteley v R* [2016] NZCA 480; and *Lavemai v R* [2016] NZCA 363.

¹¹ *R v Tumahai* CA262/04, 26 October 2004; *Marteley v R* [2016] NZCA 480; *Lavemai v R* [2016] NZCA 363; *R v Skinner & Clegg* HC Auckland CRI-2008-092-14599, 30 August 2010; *R v Doyle* HC Rotorua CRI-2005-070-6451, 13 October 2006; *R v Yates* [2018] NZHC 2600; *R v Karauria* [2018] NZHC 1184; and *R v Carroll* [2017] NZHC 2691.

¹² *R v Doyle* HC Rotorua CRI-2005-070-6451, 13 October 2006.

starting minimum period of imprisonment of 21 years, but reduced it to 19 years on account of his guilty plea, remorse and assistance to Police.

[52] In *Doyle* there were two deaths compared to the one here. But the fact Mrs Tu'uheava lived, as I have said, is nothing short of miraculous. You went to some lengths to make sure she died. Here, the killing was, in my view, also more callous than in *Doyle*. This was an execution-style killing and there were a number of shots fired.

[53] After considering the aggravating features of the offending and the other cases referred to me by both counsel, a starting point of a minimum period of imprisonment of 19 years is appropriate.

[54] I then have to consider whether there are any mitigating features personal to you that justify a reduction to the sentence.

[55] Your counsel says you should get a discount of three to six months for remorse. He points to your having offered to participate in restorative justice, for which courts sometimes give a discount, even if a victim refuses, if they consider the offer was genuine and demonstrates remorse. You have also submitted the letters from yourself, members of your family, and a friend, to which I referred earlier. I have given this matter careful consideration. I accept the genuineness of what your family and friend say and how shocked they are by what you have done. I accept that you regret what you have done and that you feel sorry in particular for the victims' young son. But I do not consider it appropriate to allow a discount for remorse here. There are three reasons for that. First, I am not convinced, especially on the basis of the pre-sentence report, that you truly comprehend and truly are sorry for the suffering of Mrs Tu'uheava. Second, I consider it highly unlikely a victim in her position would ever have consented to restorative justice, and I do not consider it appropriate to give credit for your offer to participate in restorative justice. And third, your guilty plea, although not as late as it appeared, was not an early one and the discount that I have said I would allow, in my view, adequately accounts for any remorse.

[56] That leaves me to address what discount is appropriate for a guilty plea.

[57] The Court of Appeal in *Malik v R* emphasised that the usual reduction of 25 per cent for a guilty plea does not apply to minimum periods of imprisonment fixed under s 104.¹³ The Crown submits that a combination of a guilty plea, previous good character and remorse are unlikely to ever result in a reduction to a minimum period of imprisonment of more than two years.¹⁴ Your counsel accepts this.

[58] In this case, the plea came close to the beginning of the trial. Normally a plea before the start of a trial will avoid the need for the victim to testify, which given the extent of Mrs Tu'uheava's injuries is no small thing. Of course, she did have to testify because your co-defendants did not plead, but that is not your fault. In such circumstances, on the basis of the guilty plea, I am prepared to allow a discount of one-and-a-half years. This brings me to a minimum period of imprisonment of 17-and-a-half years.

[59] Given my conclusion of a final minimum period of imprisonment of 17-and-a-half years, I do not need to proceed to determine whether s 104's effect would be manifestly unjust. I note that the defence accepts it would not be manifestly unjust to impose a sentence under s 104.

Attempted murder sentence

[60] In light of my conclusion on the murder charge, any sentence for attempted murder is academic, and counsel, as is standard, have not provided substantive submissions on that sentence. However, I consider it important I do discuss that sentence because I consider the severity of the offending against Mrs Tu'uheava should not be minimised.

[61] It is difficult to imagine a more serious attempted murder. You could hardly have done more to ensure that Mrs Tu'uheava died. As I said earlier, it is frankly a miracle she survived.

¹³ *Malik v R* [2015] NZCA 597 at [23].

¹⁴ See *R v Gottermeyer* [2014] NZCA 205 at [95]. See further Simon France (ed) *Adams on Criminal Law* (online looseleaf ed, Thompson Reuters) at SA104.04.

[62] Attempted murder carries a maximum starting point of 14 years' imprisonment.¹⁵ I have reviewed some cases, obtained through my own research, to find a comparison.¹⁶ I consider the present offending is among the most serious of its type. Mrs Tu'uheava was shot at least four times, including twice in the head. She was shot at many more times. After she was shot in the head, you shot at her again while she was lying still on the ground. She and her husband were alone on a dark, isolated road with at least two armed men, and therefore vulnerable.

[63] I consider the cases closest to this case are *R v Simiona* and *Rajgopaul v R*.¹⁷ Both of those concern the attempted murder of police officers; in the former with a pistol, and in the latter with a machete. The Court began with starting points of 14 and 13 years respectively. I consider this case on the agreed facts to be just as serious. Although those cases involved attacks on police officers, this case involves a more calculated attempted killing, and a higher degree of vulnerability.

[64] Because of the somewhat academic nature of the sentence for this charge, I do not propose to go into more detail on the aggravating factors or on the case law. Suffice to say, it is a principle of sentencing that the maximum penalty must be imposed if the offending is within the most serious of cases for which that penalty is prescribed.¹⁸ I consider this principle is engaged here.

[65] I begin with the maximum starting point of 14 years' imprisonment. From that, I deduct 20 per cent for the guilty plea. This results in an end point of 11 years and two months' imprisonment, to be served concurrently.

Conclusion

[66] Mr Taani, please stand.

[67] On the charge of murder, I sentence you to life imprisonment, with a minimum period of imprisonment of 17 years and six months.

¹⁵ Crimes Act 1961, s 173(1).

¹⁶ *R v Nicol* [2014] NZHC 2110; *Rajgopaul v R* [2011] NZCA 593; *R v Simiona* HC Wanganui CRI-2010-083-378; and *Marsters v R* [2011] NZCA 505.

¹⁷ *R v Nicol* [2014] NZHC 2110; and *Rajgopaul v R* [2011] NZCA 593.

¹⁸ Sentencing Act 2002, s 8(c).

[68] On the charge of attempted murder, I sentence you to 11 years and two months' imprisonment, to be served concurrently.

[69] Please stand down.

Hinton J